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Idaho Code Commission

RICHARD F. GOODSON
R. DANIEL BOWEN JEREMY P. PISCA
COMMISSIONERS

MAX M. SHEILS, JR.
EXECUTIVE SECRETARY

TITLES 35-37

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2012	March 29, 2012

TITLE 35

FENCES

CHAPTER.

1. FENCES IN GENERAL, § 35-106.

CHAPTER 1

FENCES IN GENERAL.

SECTION.

35-106. Disagreement between owners — Viewers.

35-106. Disagreement between owners — Viewers. — If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five (5) days' notice, to a magistrate judge, for the appointment of three (3) viewers, who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one (1) proprietor, how much the other must pay as his proportion of the value.
2. If the fence or the whole thereof is not built, which part thereof must afterward be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one (1) party is to pay the other a proportion also fixed, such proportion must be paid within thirty (30) days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars (\$3.00) each, one-half (1/2) to be paid by each proprietor.

History.

1885, p. 118, § 1; R.S., § 1305; reen. R.C. & C.L., § 1269; C.S., § 1961; I.C.A., § 34-106; am. 2012, ch. 20, § 18, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substituted "magistrate judge" for "justice of the peace of the township, if there be one, if not, to the probate judge" near the middle of the introductory paragraph.

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TITLE 36

FISH AND GAME

CHAPTER.

1. FISH AND GAME COMMISSION, § 36-111.
4. LICENSES TO HUNT, FISH AND TRAP, §§ 36-405 — 36-409, 36-416.
6. COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE, § 36-606.

CHAPTER.

14. GENERAL PENAL PROVISIONS, § 36-1401.
15. PUBLIC SAFETY, § 36-1508.

CHAPTER 1

FISH AND GAME COMMISSION

SECTION.

- 36-111. Fish and game set-aside account.

36-111. Fish and game set-aside account. — (1) There is hereby established the fish and game set-aside account in the dedicated fund. The account shall have paid into it moneys as follows:

(a) Four dollars (\$4.00) of each steelhead trout or anadromous salmon permit sold. Moneys from this source shall be used for the acquisition, development and maintenance of parking areas, access sites, boat ramps and sanitation facilities in salmon and steelhead fishing areas, for management of and research on steelhead trout and anadromous salmon problems, and for technical assistance with litigation concerning steelhead and anadromous salmon originating in Idaho.

(b) Two dollars (\$2.00) from each combination hunting and fishing license, or each hunting license sold, as provided in sections 36-406 and 36-407, Idaho Code, except that class 4 licenses shall be exempt from this provision. Moneys from this source shall be used for the purposes of acquiring access to and acquiring and rehabilitating big game ranges and upland bird and waterfowl habitats. Unless it is inconsistent with the goals of the commission, it is the intent of the legislature that the commission negotiate lease arrangements as compared with outright purchase of private property.

(c) One dollar and fifty cents (\$1.50) from each antelope, elk and deer tag sold as provided in section 36-409, Idaho Code. Not less than seventy-five cents (75¢) of each one dollar and fifty cents (\$1.50) collected shall be placed in a separate account to be designated as a feeding account. Moneys in this account shall be used exclusively for the purposes of actual supplemental winter feeding of antelope, elk and deer. Moneys shall be used solely for the purchase of blocks, pellets and hay for such winter feeding purposes and/or for the purchase of seed or other material that can be shown to directly provide feed or forage for the winter feeding of antelope, elk and deer. The balance of moneys realized from this source may be used for the control of depredation of private property by antelope, elk and deer and control of predators affecting antelope, elk and deer.

Moneys in the feeding account shall not be used for any purpose other than winter feeding as herein specified. Moneys in the feeding account may not be expended except upon the declaration of a feeding emergency by the director of the department of fish and game. Such emergency need not exist on a statewide basis but can be declared with respect to one (1) or more regions of the state. The department shall by rule establish the criteria for a feeding emergency. The department shall submit a yearly report to the senate resources and environment committee and the house resources and conservation committee of the legislature on or before the 31st day of July, detailing how funds in the feeding account have been expended during the preceding fiscal year.

(d) Those amounts designated by individuals in accordance with section 63-3067A(3)(a), Idaho Code, and from fees paid under the provisions of section 49-417, Idaho Code. Moneys from these sources shall be used for a nongame management and protection program under the direction of the fish and game commission.

(e) Money derived from the assessment of processing fees. Moneys derived from this source shall be used as provided in section 36-1407, Idaho Code.

(2) Moneys in the fish and game set-aside account and the feeding account established in subsection (1)(c) of this section are subject to appropriation, and the provisions of section 67-3516, Idaho Code. Moneys in the fish and game set-aside account and the feeding account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code, with interest earned on investments from each account to be paid into that account.

History.

I.C., § 36-111, as added by 1990, ch. 388, § 7, p. 1067; am. 1992, ch. 190, § 2, p. 593; am. 1994, ch. 149, § 2, p. 342; am. 1994, ch.

269, § 1, p. 832; am. 2000, ch. 211, § 4, p. 538; am. 2008, ch. 218, § 1, p. 675; am. 2012, ch. 342, § 1, p. 954.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 342, in subsection (c), substituted "actual supplemental winter feeding of" for "winter feeding of and rehabilitation of winter range for" in the third sentence, added the fourth sentence, deleted "until the total funds in the account, including any interest earnings thereon, equal or ex-

ceed four hundred thousand dollars (\$400,000)" from the end of the sixth sentence and added the last sentence.

Effective Dates.

S.L. 2012, chapter 342 became law without the signature of the governor, effective July 1, 2012.

CHAPTER 4

LICENSES TO HUNT, FISH AND TRAP

SECTION.

36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license.

SECTION.

36-406. Resident fishing, hunting and trapping licenses — Fees.
36-407. Nonresident combination, fishing,

SECTION.

hunting, and trapping licenses
— Fees — Rights under.

36-408. Commission's authority — Tags —
Permits — Nonresidents limited — Outfitters set-aside.

SECTION.

36-409. Game tags — Permits — Fees —
Penalty.

36-416. Schedule of license fees.

36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license. — (a) Application Required.

1. Any person making application for a senior resident license, or resident license shall provide his Idaho driver's license number as proof of residence, or in the case of nondrivers, other suitable proof of residency, and state the class of license applied for, the name of the applicant, the age of the applicant, his date of birth, his length of residence, his current address, and such other information as may be required by the director.

2. Any person making application for a duplicate license shall state the type and class of license originally purchased and such other information as may be required by the director.

3. No person shall willfully make a false statement as to:

(A) Name, age, his date of birth, length of residence or current address when such statement is made for the purpose of obtaining any license.

(B) Type and class of original license purchased when applying for a duplicate license.

(b) Loss of License — New One Required. In case of loss of a license, a new one shall be required to entitle the person who lost the same to hunt, fish or trap. Such person may upon application:

1. Purchase a new license at the regular fee; or

2. Replace a lost license with a duplicate license for which a fee as specified in section 36-416, Idaho Code, shall be charged.

3. When a duplicate license has been issued the original license shall become null and void.

(c) Unlawful Purchase, Possession and Use of License.

1. Every person buying a license must buy a license of the proper type or class according to his residence and age. No person shall purchase or possess a license of the wrong class and such license shall be void and of no effect from the date of issuance.

2. No person shall:

(A) Acquire more than one (1) regular controlled hunt permit per species or more tags per species than the commission has set a bag limit for that species except as provided in subsection (b) of this section or to have said permits or tags in his possession.

(B) Transfer any fishing, hunting, or trapping license to any other person or for any person to make use of such license issued to any other person with the exception of a parent or grandparent designating any controlled hunt tag or controlled hunt permit to his or her minor child or grandchild as prescribed by rules of the commission. A controlled hunt tag or controlled hunt permit can be designated only to a minor child with a valid hunting license or one who is participating in a mentored hunting program as prescribed by rules of the commission. A

controlled hunt tag or controlled hunt permit designated to a minor child cannot be sold.

History.

I.C., § 36-405, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 1, p. 872; am. 1990, ch. 8, § 1, p. 13; am. 1992, ch. 81, § 6, p.

222; am. 1995, ch. 63, § 1, p. 157; am. 1995, ch. 64, § 5, p. 158; am. 1995, ch. 287, § 11, p. 951; am. 2000, ch. 211, § 8, p. 538; am. 2012, ch. 161, § 1, p. 436.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 161, in paragraph (c)2.(B), added “with the exception of a parent or grandparent designating any con-

trolled hunt tag or controlled hunt permit to a minor child or grandchild as prescribed by rules of the commission” in the first sentence and added the last two sentences.

36-406. Resident fishing, hunting and trapping licenses — Fees.

— (a) Adult Licenses — Combination — Fishing — Hunting — Trapping. A license of the first class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game birds, unprotected and predatory animals and fish of the state, a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to fish in the public waters of the state, a fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory animals of the state, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to trap furbearers, unprotected and predatory animals of the state.

(b) Junior Licenses — Hunting — Trapping. A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a hunting license, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(c) Junior Combination — Fishing Licenses. A license of the third class may be purchased by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(d) Senior Resident Combination. A license of the fourth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(e) Lifetime Licenses — Combination — Hunting — Fishing. A license of the fifth class may be obtained at no additional charge by a person possessing the qualifications therein described for a combined hunting and fishing license, for a hunting license, or for a fishing license, entitling the person to the same privileges as the corresponding license of the first class

provides. Lifetime licensees must be certified under the provisions of section 36-413, Idaho Code, before being issued a license to hunt.

(f) A license of the eighth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, entitling the purchaser to hunt and fish for game animals, game birds, fish, and unprotected and predatory animals of the state. With payment of the required fee, a person shall receive with this license a deer tag, an elk tag, a bear tag, a turkey tag, a mountain lion tag, a wolf tag, an archery hunt permit, a muzzleloader permit, a steelhead trout permit and an anadromous salmon permit. The director shall promptly transmit to the state treasurer all moneys received pursuant to this subsection for deposit as follows:

- (i) Four dollars (\$4.00) in the [fish and game] set-aside account for the purposes of section 36-111(1)(a), Idaho Code;
- (ii) Two dollars (\$2.00) in the [fish and game] set-aside account for the purposes of section 36-111(1)(b), Idaho Code;
- (iii) One dollar and fifty cents (\$1.50) in the [fish and game] set-aside account for the purposes of section 36-111(1)(c), Idaho Code; and
- (iv) The balance in the fish and game account.

All persons purchasing a license pursuant to this subsection shall observe and shall be subject to all rules of the commission regarding the fish and wildlife of the state.

If the purchaser of this license does not meet the archery education requirements of section 36-411(b), Idaho Code, then, notwithstanding the provisions of section 36-304, Idaho Code, the archery hunt permit portion of this license is invalid. The fee for this license will not change and the license must be issued without the archery permit validation.

(g) Disabled Persons Licenses — Combination — Fishing. A license of the first class may be had by any resident disabled person on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license, entitling the purchaser to the same privileges as the corresponding license of the first class provides. A disabled person means a person who is deemed disabled by one (1) or more, but not necessarily all, of the following: the railroad retirement board pursuant to title 45 of the United States Code, or certified as eligible for federal supplemental security income (SSI); or social security disability income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or certified as permanently disabled by a physician. Once determination of permanent disability has been made with the department, the determination shall remain on file within the electronic filing system and the license holder shall not be required to present a physician's determination each year or prove their disability each year.

(h) Military Furlough Licenses — Combination — Fishing. A license of the first class may be had by a resident person engaged in the military service of the United States, while on temporary furlough or leave, possessing the qualifications therein described on payment of a fee as specified in

section 36-416, Idaho Code, for a combined fishing and hunting license, and as specified in section 36-416, Idaho Code, for a fishing license.

(i) **Youth Small Game Licenses — Hunting.** A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, provided that the license shall be valid only for hunting upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state while accompanied in the field by the holder of an adult Idaho hunting license.

History.

I.C., § 36-406, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 2, p. 872; am. 1981, ch. 98, § 1, p. 142; am. 1986, ch. 52, § 3, p. 149; am. 1988, ch. 205, § 2, p. 385; am. 1990, ch. 372, § 3, p. 1023; am. 1990, ch. 388, § 9, p. 1067; am. 1994, ch. 84, § 1, p. 198; am. 1995, ch. 287, § 12, p. 951; am. 1998, ch. 298,

§ 2, p. 984; am. 1998, ch. 357, § 3, p. 1116; am. 1999, ch. 32, § 1, p. 63; am. 2000, ch. 211, § 9, p. 538; am. 2001, ch. 158, § 1, p. 565; am. 2002, ch. 234, § 3, p. 684; am. 2006, ch. 168, § 1, p. 518; am. 2008, ch. 98, § 2, p. 266; am. 2010, ch. 50, § 2, p. 94; am. 2012, ch. 201, § 1, p. 536.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 201, inserted “a wolf tag”, in the second sentence in the introductory paragraph of subsection (f).

(f)(i), (f)(ii), and (f)(iii) were added by the compiler to supply the correct, full name of the referenced account. See § 36-111.

The words enclosed in parentheses so appeared in the law as enacted.

Compiler's Notes.

The bracketed insertions in subdivisions

36-407. Nonresident combination, fishing, hunting, and trapping licenses — Fees — Rights under. — Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) **Nonresident Hunting With Three Day Fishing License.** A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code, and to fish in the waters of the state for a period of three (3) consecutive days for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(b) **Nonresident Season Fishing License.** A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(c) **Nonresident Trapping License.** A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code, providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) **Nonresident Nongame License.** A license entitling a person to carry a

shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Small Game Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of a fee as specified in section 36-416, Idaho Code. Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License — Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of a fee as specified in section 36-416, Idaho Code, for the first effective day and a fee as specified in section 36-416, Idaho Code, for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for any species of fish, steelhead trout and anadromous salmon subject to the limitations prescribed in rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so.

(i) Nonresident Junior Fishing License. A license entitling a nonresident who is less than eighteen (18) years of age to fish in the waters of this state may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(j) Nonresident Combination Licenses. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory animals of the state may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified person who is eleven (11) years of age to allow the application for a controlled hunt permit; however, the person shall not hunt until he is twelve (12) years of age.

(k) **Nonresident Junior Mentored Hunting License.** A license entitling a nonresident between twelve (12) and seventeen (17) years of age, inclusive, to hunt game animals, upland game birds (including turkeys), migratory game birds, cottontail rabbits, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(l) **Nonresident Youth Small Game Licenses — Hunting.** A license entitling a nonresident of ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only while accompanied in the field by the holder of an adult Idaho hunting license may be had upon payment of a fee as specified in section 36-416, Idaho Code. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age.

(m) **Youth Hunter Education Graduate Licenses — Hunting — Resident May Purchase.** A license entitling a person between ten (10) and seventeen (17) years of age, inclusive, to hunt upland game birds (except turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required permits. A license of this kind may be issued to a resident or nonresident person, notwithstanding the provisions of section 36-405, Idaho Code, upon payment of a fee as specified in section 36-416, Idaho Code.

(n) **Nonresident Disabled American Veteran.** A license entitling a person to participate in a hunt in association with a qualified organization. “Qualified organization,” as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

History.

I.C., § 36-407, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 3, p. 872; am. 1981, ch. 98, § 2, p. 142; am. 1985, ch. 65, § 1, p. 135; am. 1986, ch. 7, § 1, p. 46; am. 1986, ch. 16, § 1, p. 56; am. 1986, ch. 52, § 4, p. 149; am. 1986, ch. 138, § 1, p. 373; am. 1986, ch. 244, § 1, p. 662; am. 1988, ch. 206, § 1, p. 387; am. 1990, ch. 372, § 4, p. 1023; am. 1990,

ch. 388, § 10, p. 1067; am. 1993, ch. 27, § 1, p. 93; am. 1995, ch. 287, § 13, p. 951; am. 1996, ch. 185, § 2, p. 582; am. 1998, ch. 47, § 1, p. 194; am. 1998, ch. 213, § 1, p. 742; am. 1999, ch. 43, § 1, p. 103; am. 2000, ch. 211, § 11, p. 538; am. 2002, ch. 234, § 4, p. 684; am. 2008, ch. 59, § 1, p. 148; am. 2008, ch. 98, § 3, p. 268; am. 2010, ch. 50, § 3, p. 94; am. 2011, ch. 88, § 2, p. 183; am. 2012, ch. 100, § 1, p. 264.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 100, in sub-

section (a), inserted “With Three Day Fishing” in the paragraph heading and inserted “and

to fish in the waters of the state for a period of three (3) consecutive days for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon" at the end of the first sentence.

36-408. Commission's authority — Tags — Permits — Nonresidents limited — Outfitters set-aside. — (1) Tags and Permits — Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title, and the manner in which said tags and permits shall be used and validated.

(2) Limit — Licenses, Tags or Permits — Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be sold or issued and is further authorized to limit the number or prohibit entirely, the participation by nonresidents in controlled hunts.

(3) Outfitters Set-Aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five percent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(4) Deer and Elk Tag Allocation. If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(5) Special Game Tags. The commission is hereby authorized to issue two (2) special bighorn sheep tags per year.

(a) Auction bighorn sheep tag. One (1) special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five percent (5%) of all proceeds for the tag may be retained by the organization. The tag to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game expendable trust account and shall be used for bighorn sheep research and management purposes. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion

of southwest Idaho south of the Snake River and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accomplished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area. Provided however, that none of the proceeds generated from the auction of bighorn sheep tags pursuant to this paragraph be used to purchase or acquire private property or federally managed grazing permits, nor shall any proceeds generated be used for matching funds for the purchase of private property or the retirement or the acquisition of federally managed grazing permits.

(b) Lottery bighorn sheep tag. The commission is also authorized to issue one (1) special bighorn sheep tag which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five percent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the department and deposited in the fish and game expendable trust account. Moneys in the account from the lottery bighorn sheep tag shall be utilized by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners.

(6) Issuance of Free Permit or Tag to Minor Children with Life-Threatening Medical Conditions. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to minor children who have life-threatening medical conditions that have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (6). For purposes of this subsection (6) a "qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the Internal Revenue Code and that affords opportunities and experiences to minor children with life-threatening medical conditions.

(7) Issuance of Free Permit or Tag to Military Veterans with Disabilities. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to disabled military veterans who have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (7). For purposes of this subsection (7), a "qualified organization" means a governmental agency that assists veterans or a nonprofit organization that is qualified under section 501(c)(3) or section 501(c)(19), of the Internal Revenue Code and that affords opportunities, experiences and assistance to disabled veterans.

(8) Special Wolf Tags. The commission is hereby authorized to issue up to ten (10) special auction or lottery tags for hunting wolves. Special wolf tags will be auctioned off or made available through lottery by incorporated nonprofit organizations dedicated to wildlife conservation and selected by

the director. No more than five percent (5%) of all proceeds for each tag may be retained by the nonprofit organization for administrative costs involved. Each wolf tag shall be issued by the department of fish and game and awarded to the highest eligible bidder or winner of a lottery. Each tag will be good for the harvest of one (1) wolf pursuant to commission rule. The proceeds from each tag will be sent to the director to be placed in the department general license fund.

(9) Special Big Game Auction Tags — Governor's Wildlife Partnership Tags. The commission is hereby authorized to issue special big game auction tags hereafter named and referred to as "Governor's wildlife partnership tags" for hunting designated species on dates and in areas designated by the commission. To enhance and sustain the value of Idaho's wildlife, up to three (3) tags per species per year may be issued for deer, elk and pronghorn antelope, one (1) tag per year may be issued for moose, and one (1) tag per species per year may be issued for mountain goat and bighorn sheep. Each tag will be signed by the governor of Idaho prior to auction to the public and be available to either residents or nonresidents of Idaho. Governor's wildlife partnership tags issued for deer, elk, pronghorn antelope and moose pursuant to this subsection shall be taken from the nonresident controlled hunt programs for these species adopted by the fish and game commission. Governor's wildlife partnership tags issued for mountain goat and bighorn sheep shall be taken from the nonresident mountain goat and bighorn sheep quota. Governor's wildlife partnership tags shall be auctioned off by incorporated nonprofit organizations dedicated to wildlife conservation and selected by the director. No more than five percent (5%) of all proceeds from each tag sale may be retained by the nonprofit organization for administrative costs involved, including in the event a tag is redonated and reauctioned. Each tag shall be issued by the department of fish and game and awarded to the highest eligible bidder. Each tag shall be good for the harvest of one (1) big game animal pursuant to commission rule consistent with the provisions of this subsection. The proceeds from each tag shall be sent to the director to be allocated up to thirty percent (30%) for sportsmen access programs, such as access yes, and the balance for wildlife habitat projects, wildlife management projects to increase the quantity and quality of big game herds, and other research and management activities approved by the commission. Provided however, that none of the proceeds generated from the auctions pursuant to the provisions of this subsection shall be used to purchase or acquire private property or federally managed grazing permits, nor shall any proceeds generated be used for matching funds for the purchase of private property or the retirement or the acquisition of federally managed grazing permits. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake River and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep.

History.

I.C., § 36-408, as added by 1976, ch. 95, § 2, p. 315; am. 1986, ch. 235, § 1, p. 646; am.

1987, ch. 322, § 1, p. 677; am. 1991, ch. 144, § 1, p. 342; am. 1995, ch. 287, § 14, p. 951; am. 1997, ch. 136, § 1, p. 404; am. 2001, ch.

170, § 1, p. 582; am. 2006, ch. 169, § 2, p. 520; am. 2007, ch. 73, § 1, p. 196; am. 2009, ch. 117, § 2, p. 373; am. 2009, ch. 314, § 2, p.

913; am. 2012, ch. 101, § 1, p. 270; am. 2012, ch. 254, § 1, p. 700.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 101, inserted “or section 501(c)(19)” near the end of subsection (7).

The 2012 amendment, by ch. 254, added the last sentence in paragraph (5)(a) and added subsection (9).

Federal References.

Section 501(c)(3) of the Internal Revenue Code, referred to in subsections (6) and (7), is codified as 26 USCS § 501(c)(3).

Section 501(c)(19) of the Internal Revenue Code, referred to in subsection (7), is codified as 26 U.S.C.S. § 501(c)(19).

36-409. Game tags — Permits — Fees — Penalty. — (a) Resident Game Tags. A resident who has obtained authorization to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license or authorization to hunt, as provided in section 36-401 or 36-406, Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one of the aforementioned wildlife. The commission shall promulgate rules to allow exception from tag possession to

take wildlife for a disabled hunter companion who is assisting a hunter possessing the appropriate tag and a valid disabled combination license or a disabled archery permit or a disabled hunt motor vehicle permit or who is a disabled veteran participating in a hunt as provided in section 36-408(7), Idaho Code. Provided, however, that the requirements for a wolf tag, a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer or elk tag to be used to hunt and kill either a bear, wolf or a mountain lion during the open season for deer or elk in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit — Resident — Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Upland Game Bird Permit. The commission may, under rules as it may prescribe, issue a wildlife management area upland game bird permit that must be purchased by all persons over sixteen (16) years of age prior to hunting stocked upland game birds on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his

possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(n) Disabled American Veteran Game Tags. Any nonresident disabled American veteran participating in a hunt in association with a qualified organization may be issued a bear, deer, elk or turkey tag for a fee as specified in section 36-416, Idaho Code. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

History.

I.C., § 36-409, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 171, § 1, p. 391; am. 1980, ch. 339, § 4, p. 872; am. 1981, ch. 98, § 3, p. 142; am. 1982, ch. 230, § 1, p. 606; am. 1984, ch. 197, § 2, p. 484; am. 1986, ch. 7, § 2, p. 46; am. 1986, ch. 52, § 5, p. 149; am. 1987, ch. 253, § 1, p. 515; am. 1988, ch. 209, § 1, p. 391; am. 1990, ch. 6, § 1, p. 11; am. 1990, ch. 372, § 5, p. 1023; am. 1991, ch. 290, § 1, p. 749; am. 1992, ch. 81, § 7, p. 222; am. 1993, ch. 27, § 2, p. 93; am. 1994, ch. 118, § 1, p.

267; am. 1995, ch. 176, § 1, p. 658; am. 1997, ch. 203, § 1, p. 577; am. 1998, ch. 175, § 4, p. 615; am. 1998, ch. 298, § 3, p. 984; am. 1998, ch. 357, § 4, p. 1116; am. 1999, ch. 55, § 1, p. 141; am. 2000, ch. 211, § 12, p. 538; am. 2001, ch. 139, § 1, p. 500; am. 2001, ch. 171, § 1, p. 586; am. 2001, ch. 206, § 1, p. 699; am. 2002, ch. 234, § 5, p. 684; am. 2007, ch. 35, § 1, p. 81; am. 2007, ch. 73, § 2, p. 196; am. 2010, ch. 102, § 1, p. 198; am. 2011, ch. 88, § 3, p. 183; am. 2011, ch. 109, § 3, p. 280; am. 2012, ch. 102, § 1, p. 272.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 102, inserted the second sentence in subsection (c).

36-416. Schedule of license fees. —**(a) Sport Licenses**

License	Resident	Non-Resident
Combination License	\$ 31.75	\$ 238.25
Hunting License	11.00	N/A
Hunting License with 3 Day Fishing License	N/A	153.00
Fishing License	24.00	96.50
Sr. Combination License (65 and Older)	10.00	N/A
Sportsman's Pak License	114.65	N/A
Jr. Combination License	15.75	N/A
Jr. Hunting License	5.50	N/A
Jr. Mentored Hunting License	N/A	30.00
Youth Small Game License	5.50	18.25
Youth Hunter Education		
Graduate Hunting License	3.25	3.25
Jr. Fishing License	12.00	20.00
Disabled Combination License	3.25	3.25
Disabled Fishing License	3.25	N/A
Military Furlough Combination License	15.75	N/A
Military Furlough Fishing License	15.75	N/A
Small Game Hunting License	N/A	96.00
3 Day Small Game Hunting License	N/A	33.75
Daily Fishing (1st-day) License	9.75	11.00
Consecutive Day Fishing License	5.00	6.00
3 Day Fishing with Salmon/Steelhead Permit	N/A	35.75
Nongame Hunting License	N/A	33.75

For purposes of this subsection, disabled combination licenses provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

(b) Sport Tags

Deer Tag	\$ 18.00	\$ 300.00
Controlled Hunt Deer Tag	18.00	300.00
Jr. or Sr. or Disabled American Veteran		
Deer Tag	9.00	9.00
Jr. Mentored Deer Tag	N/A	22.00
Elk A Tag	29.00	415.00
Elk B Tag	29.00	415.00
Controlled Hunt Elk Tag	29.00	415.00
Jr. or Sr. or Disabled American Veteran		
Elk Tag	14.75	14.75
Jr. Mentored Elk Tag	N/A	38.00
Bear Tag	9.75	184.25
Jr. or Sr. or Disabled American Veteran		
Bear Tag	5.00	5.00
Jr. Mentored Bear Tag	N/A	22.00
Turkey Tag	18.00	78.25

Jr. or Sr. or Disabled American Veteran		
Turkey Tag	9.00	9.00
Jr. Mentored Turkey Tag	N/A	18.00
Mountain Lion Tag	9.75	184.25
Gray Wolf Tag	9.75	184.25
Antelope Tag	29.50	310.00
Moose Tag	165.00	2,100.00
Sheep Tag	165.00	2,100.00
Goat Tag	165.00	2,100.00
Sandhill Crane Tag	18.00	65.75

For purposes of this subsection, Jr. or Sr. or disabled American veteran tags provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

(c) Sport Permits

Bear Baiting Permit	\$ 11.00	\$ 30.00
Hound Hunter Permit	11.00	168.00
WMA Upland Game Bird Permit	22.00	50.00
Archery Permit	16.50	18.25
Muzzleloader Permit	16.50	18.25
Salmon Permit	11.00	24.00
Steelhead Permit	11.00	24.00
Federal Migratory Bird Harvest Info. Permit	0.00	3.00
Disabled Archery Permit	0.00	0.00
2-Pole Fishing Permit	12.00	13.75
Turkey Controlled Hunt Permit	6.00	6.00
Sage/Sharptail Grouse Permit	3.00	3.00
Disabled Hunt Motor Vehicle Permit	0.00	0.00

(d) Commercial Licenses and Permits

Raptor Captive Breeding Permit	\$ 65.75	\$ 78.75
Falconry Permit	27.25	N/A
Falconry Capture Permit	N/A	168.00
Jr. Trapping License	5.50	N/A
Trapping License	25.00	300.00
Taxidermist-Fur Buyer License		
5 year license	175.00	N/A
1 year license	38.25	168.25
Shooting Preserve Permit	329.75	N/A
Commercial Wildlife Farm License	137.50	N/A
Commercial Fishing License	110.00	265.00
Wholesale Steelhead License	165.00	198.25
Retail Steelhead Trout Buyer's License	33.00	39.25

(e) Commercial Tags

Bobcat Tag	\$ 3.00	\$ 3.00
Otter Tag	3.00	3.00
Net Tag	55.00	65.75
Crayfish/Minnow Tag	1.25	3.00

(f) Miscellaneous-Other Licenses		
Duplicate License	\$ 5.50	\$ 6.50
Shooting Preserve License	11.00	22.00
Captive Wolf License	22.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	\$ 5.50	\$ 6.50
Wild Bird Shooting Preserve Tag	5.50	6.50
(h) Miscellaneous-Other Permits-Points-Fees		
Falconry In-State Transfer Permit	\$ 5.50	\$ N/A
Falconry Meet Permit	N/A	26.25
Rehab Permit	3.00	3.00
Educational Fishing Permit	0.00	0.00
Live Fish Importation Permit	3.00	3.00
Sport Dog and Falconry Training Permit	3.00	3.00
Wildlife Transport Permit	3.00	3.00
Scientific Collection Permit	50.00	50.00
Private Park Permit	21.75	26.25
Wildlife Import Permit	21.75	26.25
Wildlife Export Permit	11.00	13.25
Wildlife Release Permit	11.00	13.25
Captive Wildlife Permit	21.75	26.25
Fishing Tournament Permit	21.75	25.00
Dog Field Trial Permit	33.00	40.00
Live Fish Transport Permit	21.75	26.25
Controlled Hunt Application Fee	4.50	13.00
Fee for Application for the Purchase of Controlled Hunt Bonus or Preference Points	4.50	4.50
Nursing Home Fishing Permit	33.00	N/A

History.

I.C., § 36-416, as added by 2000, ch. 211, § 15, p. 538; am. 2001, ch. 125, § 1, p. 444; am. 2001, ch. 206, § 2, p. 699; am. 2002, ch. 234, § 8, p. 684; am. 2004, ch. 236, § 1, p. 698; am. 2005, ch. 379, § 3, p. 1234; am. 2007,

ch. 35, § 2, p. 81; am. 2007, ch. 73, § 3, p. 196; am. 2009, ch. 201, § 2, p. 643; am. 2010, ch. 94, § 1, p. 179; am. 2011, ch. 88, § 4, p. 183; am. 2012, ch. 100, § 2, p. 264; am. 2012, ch. 201, § 2, p. 536.

STATUTORY NOTES**Amendments.**

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 100, in subsection (a), substituted “N/A” for “153.00” for

non-resident hunting license and inserted “Hunting License with 3 Day Fishing License” and its fee schedule.

The 2012 amendment, by ch. 201, substituted “114.65” for “108.50” for the resident Sportsman’s Pak License in subsection (a).

CHAPTER 6

COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE

SECTION.

36-606. Confiscation of wildlife — Proof of ownership required.

36-606. Confiscation of wildlife — Proof of ownership required.

— (1) The director is hereby authorized to seize and confiscate any wildlife or the skins, hides, pelts, horns or antlers or other portions thereof in the possession of any fur buyer or taxidermist, licensed or unlicensed, unless the person having same is able to produce satisfactory record of lawful origin and proof of ownership.

(2) Compliance with record requirements as provided in section 36-603, Idaho Code, shall constitute satisfactory record of lawful origin and proof of ownership requirements as provided in subsection (1) of this section.

History.

I.C., § 36-606, as added by 1976, ch. 95,
§ 2, p. 315; am. 2011, ch. 252, § 2, p. 695.

STATUTORY NOTES

Compiler's Notes.

This section is set out to correct an error in subsection (1) in the bound volume.

CHAPTER 14

GENERAL PENAL PROVISIONS

SECTION.

36-1401. Violations.

36-1401. Violations. — (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules or proclamations promulgated pursuant thereto is guilty of an infraction:

1. Statutes.

(A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.

(B) Chumming as set forth in section 36-902(e), Idaho Code.

(C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.

(D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

(E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.

(F) Own, possess or harbor any dog found running loose and which is

tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)7.(B), Idaho Code.

(G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.

(H) Hunt migratory game birds without having in possession a license validated for the federal migratory bird harvest information program permit as set forth in section 36-409(k), Idaho Code.

(I) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.

(J) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

2. Rules or Proclamations.

(A) Fish from a raft or boat with motor attached in waters where motors are prohibited.

(B) Fish with hooks larger than allowed in that water.

(C) Fish with barbed hooks in waters where prohibited.

(D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.

(E) Fish with more than the approved number of lines or hooks.

(F) Fail to leave head and/or tail on fish while fish are in possession or being transported.

(G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.

(H) Fail to attend fishing line and keep it under surveillance at all times.

(I) Fail to comply with mandatory check and report requirements.

(J) Fail to leave evidence of sex or species attached as required on game birds.

(K) Hunt or take migratory game birds or upland game birds with shot exceeding the allowable size.

(L) Fail to release, report or turn in nontarget trapped animals.

(M) Fail to complete required report on trapped furbearer.

(N) Fail to present required furbearer animal parts for inspection.

(O) Fail to attach identification tags to traps.

(P) Possess not more than one (1) undersized bass.

(Q) Park or camp in a restricted area, except length of stay violations.

(R) Fail to leave evidence of sex attached as required on game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules or proclamations promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or

purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.

2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.

3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursable damage assessment of more than one thousand dollars (\$1,000), as provided in section 36-1404, Idaho Code.

4. Conviction within ten (10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

History.

I.C., § 36-1401, as added by 1976, ch. 95, § 2, p. 315; am. 1991, ch. 44, § 2, p. 83; am. 1991, ch. 130, § 1, p. 285; am. 1992, ch. 172, § 1, p. 536; am. 1994, ch. 94, § 2, p. 213; am.	1997, ch. 270, § 1, p. 781; am. 1997, ch. 347, § 1, p. 1032; am. 1998, ch. 58, § 1, p. 214; am. 1998, ch. 170, § 12, p. 567; am. 1999, ch. 32, § 3, p. 63; am. 2000, ch. 211, § 31, p. 538; am. 2012, ch. 107, § 2, p. 284.
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STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, substituted “36-1101(b)7.(B)” for “36-1101(b)6.(B)” in paragraph 1.(F).

CHAPTER 15
PUBLIC SAFETY

SECTION.

36-1508. Shooting from public highway —	Children in possession of firearms.
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36-1508. Shooting from public highway — Children in possession of firearms. — No person shall:

(a) Shoot from Public Highway. Discharge any firearm from or across a public highway.

(b) Children with Firearms. No person under the age of ten (10) years shall have in his possession any shotgun, rifle or other firearm while in the fields or forests or in any tent, camp, auto or any other vehicle in the state of Idaho, except that the holder of a valid hunting license or a participant in a mentored hunting program as prescribed by rules of the commission, if accompanied by an adult licensed to hunt in the state of Idaho, may possess a firearm for hunting while in the fields or forests.

History.

I.C., § 36-1508, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 34, p. 222; am.	2002, ch. 234, § 9, p. 684; am. 2012, ch. 104, § 1, p. 280.
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STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 104, in subsection (b). substituted “age of ten (10) years” for “age of twelve (12) years” near the begin-	ning and substituted “holder of a valid hunting license or a participant in a mentored hunting program as prescribed by rules of the commission” for “holder of a youth small game
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license or youth hunter education graduate
license" near the end.

TITLE 37

FOOD, DRUGS, AND OIL

CHAPTER.

27. UNIFORM CONTROLLED SUBSTANCES, §§ 37-2705, 37-2709, 37-2711, 37-2713, 37-2726, 37-2730A.

CHAPTER.

33. RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS, §§ 37-3303, 37-3303A.

CHAPTER 27

UNIFORM CONTROLLED SUBSTANCES

Article II

Article III

SECTION.

37-2705. Schedule I.
37-2709. Schedule III.
37-2711. Schedule IV.
37-2713. Schedule V.

SECTION.

37-2726. Filing prescriptions — Database.
37-2730A. Prescription tracking program.

Article II

37-2705. Schedule I. — (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaproline;
- (16) Clonitazene;

- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacymorphan;
- (34) 3-Methylfentanyl;
- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Propерidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;

- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;
- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alphadesmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) 5-methoxy-N,N-dimethyltryptamine (also known as 5-methoxy-3-2[2-(dimethylamino)ethyl]indole and 5-MeO-DMT);

- (16) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (17) Alpha-methyltryptamine;
- (18) Bufotenine;
- (19) Diethyltryptamine (DET);
- (20) Dimethyltryptamine (DMT);
- (21) Ibogaine;
- (22) Lysergic acid diethylamide;
- (23) Marihuana;
- (24) Mescaline;
- (25) Parahexyl;
- (26) Peyote;
- (27) N-ethyl-3-piperidyl benzilate;
- (28) N-methyl-3-piperidyl benzilate;
- (29) Psilocybin;
- (30) Psilocyn;
- (31) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

i. Tetrahydrocannabinols:

- a. Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.
- b. Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.
- c. $\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
- d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6- dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and its geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

- a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring to any extent, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring to any extent, whether or not further substituted in the indene

ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring to any extent, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. [(6S, 6aR, 9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10, 10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(32) Ethylamine analog of phencyclidine: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(33) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(34) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(35) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(36) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

- (2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
- (3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
- By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents;
 - By substitution at the 3-position with an acyclic alkyl substituent;
 - By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.
- (4) Fenethylamine;
- (5) Methcathinone (some other names: 2-(methyl-amino)-propionophenone, alpha-(methylanino)-propionophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
- (6) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazoline];
- (7) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- (8) N-ethylamphetamine;
- (9) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).

History.

I.C., § 37-2705, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 1, p. 698; am. 1980, ch. 160, § 1, p. 340; am. 1981, ch. 102, § 1, p. 149; am. 1984, ch. 160, § 1, p. 390; am. 1985, ch. 25, § 1, p. 41; am. 1986, ch. 209, § 1, p. 534; am. 1987, ch. 38, § 1, p. 61; am. 1988, ch. 190, § 1, p. 337; am. 1989, ch. 177, § 1, p.

428; am. 1995, ch. 1, § 1, p. 3; am. 1996, ch. 36, § 1, p. 90; am. 1998, ch. 160, § 1, p. 545; am. 2003, ch. 185, § 1, p. 499; am. 2004, ch. 302, § 1, p. 845; am. 2010, ch. 117, § 1, p. 243; am. 2011, ch. 46, § 1, p. 105; am. 2011, ch. 47, § 1, p. 109; am. 2011, ch. 134, § 1, p. 368; am. 2012, ch. 181, § 1, p. 472.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 181, added paragraph (d)(15) and redesignated the subsequent subsections accordingly; substituted "to any extent" for "by alkyl, alkenyl,

cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl" throughout paragraph (d)(31)(ii); and inserted "[6S, 6aR, 9R, 10aR)-" and "(2R)-" in the formula in paragraph (d)(31)(ii).

37-2709. Schedule III. — (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts,

isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, including, but not limited to:

i. Aprobarbital;

ii. Butabarbital (secbutabarbital);

iii. Butalbital;

iv. Butobarbital (butethal);

v. Talbutal;

vi. Thiamylal;

vii. Thiopental;

viii. Vinbarbital.

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;

(7) Ketamine, its salts, isomers, and salts of isomers — 7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methyldamino)-cyclohexanone).

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Sulfondiethylmethane;

- (12) Sulfonethylmethane;
- (13) Sulfonmethane;
- (14) Tiletamine and zolazepam or any salt thereof.
- (d) Nalorphine.
- (e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:
 - (1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (iii) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (iv) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (v) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (vi) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;
 - (vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (viii) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - (2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:
 - (i) Buprenorphine.
 - (ii) [Reserved].
 - (f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.
 - (1) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;
 - (2) 17alpha-methyl-3alpha, 17beta-dihydroxy-5alpha-androstane;

- (3) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane;
- (4) 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
- (5) 17alpha-methyl-4-hydroxynandrolone;
- (6) 17alpha-methyl-delta1-dihydrotestosterone;
- (7) 19-nor-4-androstenediol;
- (8) 19-nor-4-androstenedione;
- (9) 19-nor-4,9(10)-androstadienedione;
- (10) 19-nor-5-androstenediol;
- (11) 19-nor-5-androstenedione;
- (12) 1-androstenediol;
- (13) 1-androstenedione;
- (14) 3alpha,17beta-dihydroxy-5alpha-androstane;
- (15) 3beta,17beta-dihydroxy-5alpha-androstane;
- (16) 4-androstenediol;
- (17) 4-androstenedione;
- (18) 4-hydroxy-19-nortestosterone;
- (19) 4-hydroxytestosterone;
- (20) 5-androstenediol;
- (21) 5-androstenedione;
- (22) Androstenedione;
- (23) Bolasterone;
- (24) Boldenone;
- (25) Boldione;
- (26) Calusterone;
- (27) Chlorotestosterone (4-chlorotestosterone);
- (28) Clostebol;
- (29) Dehydrochlormethyltestosterone;
- (30) Delta1-dihydrotestosterone;
- (31) Desoxymethyltestosterone;
- (32) Dihydrotestosterone (4-dihydrotestosterone);
- (33) Drostanolone;
- (34) Ethylestrenol;
- (35) Fluoxymesterone;
- (36) Formebolone;
- (37) Furazabol;
- (38) Human growth hormones;
- (39) Mestanolone;
- (40) Mesterolone;
- (41) Methandienone;
- (42) Methandranone;
- (43) Methandriol;
- (44) Methandrostenolone;
- (45) Methenolone;
- (46) Methyldienolone;
- (47) Methyltestosterone;
- (48) Methyltrienolone;
- (49) Mibolerone;
- (50) Nandrolone;

- (51) Norbolethone;
- (52) Norclostebol;
- (53) Norethandrolone;
- (54) Normethandrolone;
- (55) Oxandrolone;
- (56) Oxymesterone;
- (57) Oxymetholone;
- (58) Stanolone;
- (59) Stanozolol;
- (60) Stenbolone;
- (61) Testolactone;
- (62) Testosterone;
- (63) Testosterone cypionate;
- (64) Testosterone enanthate;
- (65) Testosterone propionate;
- (66) Tetrahydrogestrinone;
- (67) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product — 7369. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol.

(i) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

History.

I.C., § 37-2709, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 4, p. 261; am. 1977, ch. 234, § 3, p. 698; am. 1980, ch. 160, § 3, p. 340; am. 1982, ch. 91, § 1, p. 165; am. 1984, ch. 160, § 3, p. 390; am. 1992, ch. 24,

§ 2, p. 72; am. 1996, ch. 36, § 2, p. 90; am. 2000, ch. 110, § 2, p. 242; am. 2003, ch. 185, § 2, p. 499; am. 2006, ch. 203, § 1, p. 620; am. 2010, ch. 117, § 3, p. 243; am. 2012, ch. 181, § 2, p. 472.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 181, substituted “were listed as excepted compounds under 21 CFR 1308.32” for “were listed on August 25, 1971, as excepted compounds un-

der 21 C.F.R. Sec. 308.32” in paragraph (b)(1); deleted paragraph (f)(28) “Chorionic gonadotropin;” and renumbered the subsequent paragraphs accordingly.

37-2711. Schedule IV. — (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Carisprodol;

(6) Chloral betaine;

(7) Chloral hydrate;

(8) Chlordiazepoxide;

(9) Clobazam;

(10) Clonazepam;

(11) Clorazepate;

(12) Clotiazepam;

(13) Cloxazolam;

(14) Delorazepam;

(15) Diazepam;

(16) Dichloralphenazone;

(17) Estazolam;

(18) Ethchlorvynol;

(19) Ethinamate;

(20) Ethyl loflazepate;

- (21) Fludiazepam;
- (22) Flurazepam;
- (23) Halazepam;
- (24) Haloxazolam;
- (25) Ketazolam;
- (26) Loprazolam;
- (27) Lorazepam;
- (28) Lormetazepam;
- (29) Mebutamate;
- (30) Medazepam;
- (31) Meproamate;
- (32) Methohexital;
- (33) Methylphenobarbital (mephobarbital);
- (34) Midazolam;
- (35) Nimetazepam;
- (36) Nitrazepam;
- (37) Nordiazepam;
- (38) Oxazepam;
- (39) Oxazolam;
- (40) Paraldehyde;
- (41) Petrichloral;
- (42) Phenobarbital;
- (43) Pinazepam;
- (44) Prazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam;
- (48) Quazepam;
- (49) Zaleplon;
- (50) Zolpidem;
- (51) Zopiclone.

(d) Fenfluramine — Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Dexfenfluramine;
- (2) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;

- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline (including organometallic complexes and chelates thereof);
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine;
- (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine;
- (2) Fospropofol.

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History.

I.C., § 37-2711, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 4, p. 698; am. 1980, ch. 160, § 4, p. 340; am. 1981, ch. 102, § 3, p. 149; am. 1982, ch. 91, § 2, p. 165; am. 1984, ch. 160, § 4, p. 390; am. 1986, ch. 209,

§ 3, p. 534; am. 1988, ch. 190, § 3, p. 337; am. 1989, ch. 177, § 3, p. 428; am. 1989, ch. 197, § 1, p. 493; am. 1992, ch. 24, § 3, p. 72; am. 1996, ch. 36, § 3, p. 90; am. 1999, ch. 67, § 1, p. 177; am. 2010, ch. 117, § 4, p. 243; am. 2012, ch. 181, § 3, p. 472.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 181, added

paragraph (c)(5) and renumbered the subsequent paragraphs accordingly.

37-2713. Schedule V. — (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

(2) Lacosamide;

(3) Pregabalin;

(4) Propylhexedrine (except as Benzedrex[™] inhaler);

(5) Pyrovalerone.

History.

I.C., § 37-2713, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 5, p. 698; am. 1980, ch. 160, § 5, p. 340; am. 1984, ch. 160, § 5, p. 390; am. 1986, ch. 209, § 4, p. 534; am.

1989, ch. 177, § 4, p. 428; am. 1990, ch. 29, § 1, p. 44; am. 2003, ch. 185, § 3, p. 499; am. 2010, ch. 117, § 5, p. 243; am. 2012, ch. 181, § 4, p. 472.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 181, added

paragraph (d)(1) and renumbered the subsequent paragraphs accordingly.

Article III

37-2726. Filing prescriptions — Database. — (1) All controlled substances dispensed for humans shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section, to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho Code. The database information must be made available only to the following:

(a) Authorized individuals employed by Idaho's boards or other states' licensing entities charged with the licensing and discipline of practitioners;

(b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;

(c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare and medicaid laws;

(d) A practitioner, licensed in Idaho or another state, having authority to prescribe controlled substances, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(e) A pharmacist, licensed in Idaho or another state, having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance, or providing pharmaceutical care as defined in the Idaho pharmacy act;

(f) An individual who is the recipient of a controlled substance prescription entered into the database or that individual's attorney, upon providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made or the attorney for that person;

(g) Upon the lawful order of a court of competent jurisdiction; and

(h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances.

(3) The board must maintain records on the information disclosed from the database, including:

(a) The identification of each individual who requests or receives information from the database and who that individual represents;

(b) The information provided to each such individual; and

(c) The date and time the information is requested or provided.

(4) The board shall promulgate rules to ensure that only authorized individuals have access to the database.

(5) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(6) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database which identifies an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law, rule or regulation; the lawful order of a court of competent jurisdiction; or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed

six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.

(7) Any person with access to the board's online prescription monitoring program pursuant to a board issued user account, login name and password who intentionally shares or recklessly fails to safeguard his user account, login name and password, resulting in another person not authorized to receive or use such information under the provisions of any state or federal law, rule or regulation obtaining information from the controlled substances prescriptions database, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(8) The board may, at its discretion, block access to certain controlled substances prescriptions database data if the board has reason to believe that access to the data is or may be used illegally.

(9) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

History.

I.C. § 37-2726, as added by 2001, ch. 178, § 5, p. 601; am. 2006, ch. 175, § 2, p. 535; am.

2008, ch. 129, § 1, p. 362; am. 2012, ch. 185, § 1, p. 489; am. 2012, ch. 198, § 1, p. 531.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 185, substituted "dispensed for humans" for "prescriptions" in the first sentence in subsection (1).

The 2012 amendment, by ch. 198, in subsection (2), substituted "employed by Idaho's boards or other states' licensing entities charged with" for "employed by the boards responsible for conducting investigations related to" in paragraph (2)(a); substituted

"practitioner, licensed in Idaho or another state" for "licensed practitioner" near the beginning of paragraph (2)(a); substituted "pharmacist, licensed in Idaho or another state" for "licensed pharmacist" and added "or providing pharmaceutical care as defined in the Idaho pharmacy act" in paragraph (2)(e); added subsections (7) and (8); renumbered former subsection (7) as subsection (9); and deleted former subsection (8), which read, "The definitions set forth in section 37-2701, Idaho Code, shall apply to this section".

37-2730A. Prescription tracking program. — (1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of

controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may release unsolicited information to pharmacists and practitioners when the release of information may be of assistance in preventing or avoiding inappropriate use of controlled substances. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

- (a) The furnishing of information under the conditions herein provided;
- (b) The receiving and use of, or reliance on, such information;
- (c) The fact that any such information was not furnished; or
- (d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(5) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

History.

I.C., § 37-2730A, as added by 2000, ch. 194,
§ 1, p. 479; am. 2001, ch. 178, § 6, p. 601; am.

2006, ch. 175, § 3, p. 535; am. 2012, ch. 198,
§ 2, p. 531.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 198, inserted
the third sentence in subsection (2).

Article IV

37-2732. Prohibited acts A — Penalties.

JUDICIAL DECISIONS

ANALYSIS

Exercise of religion.
Restitution.

Exercise of Religion.

Prosecution of defendant who claimed that he was an ordained minister and that he provided marijuana to be smoked by his friends as a sacrament did not violate his right to the free exercise of religion under the state and federal constitutions. This section is a statute of general application and it does not proscribe any conduct because it is engaged in for religious reasons or because of the religious belief it portrays. It is entirely neutral with respect to religion. *State v. Fluewelling*, 150 Idaho 576, 249 P.3d 375 (2011).

Restitution.

A reasonable reading of subsection (k) includes costs incurred for law enforcement employees' attendance at a restitution hearing and the costs of their investigation. *State v. Mosqueda*, 150 Idaho 830, 252 P.3d 563 (Ct. App. 2010).

Cited in: *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011); *State v. Johnson*, — Idaho —, 266 P.3d 1161 (Ct. App. 2011); *State v. Betancourt*, 151 Idaho 635, 262 P.3d 278 (Ct. App. 2011); *State v. Kessler*, 151 Idaho 653, 262 P.3d 682 (Ct. App. 2011).

37-2732B. Trafficking — Mandatory sentences.

JUDICIAL DECISIONS

Enhanced Sentence.

The plain language of paragraph (7) clearly demonstrates that, if it is established at the time of sentencing that the conviction for which the defendant is being sentenced is the second trafficking conviction for the defendant, the sentencing court shall apply a mandatory minimum fixed term that is twice what

is otherwise required. The plain language does not require that the arrest for the second trafficking offense occur after a defendant's first trafficking conviction. *State v. Beavers*, — Idaho —, 268 P.3d 1 (Ct. App. 2010).

Cited in: *State v. Johnson*, — Idaho —, 266 P.3d 1161 (Ct. App. 2011).

37-2734. Prohibited acts C — Penalties.

JUDICIAL DECISIONS

Cited in: *State v. Summers*, — Idaho —, 266 P.3d 510 (Ct. App. 2011).

37-2734A. Prohibited acts D — Penalties.

JUDICIAL DECISIONS

Cited in: *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011); *State v. Johnson*, — Idaho —, 266 P.3d 1161 (Ct. App. 2011).

37-2739A. Mandatory minimum penalty.

JUDICIAL DECISIONS

Admission.
To be used to enhance a sentence under this section, an admission to an earlier, qualifying offense must be voluntary; that is, it made

must be made with a full understanding of the consequences. State v. Beavers, — Idaho —, 268 P.3d 1 (Ct. App. 2010).

CHAPTER 33

RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS

SECTION.
37-3303. Limitations on sales and purchases.

SECTION.
37-3303A. Electronic tracking system.

37-3303. Limitations on sales and purchases. — (1) It shall be unlawful for any retailer to knowingly sell, transfer or otherwise furnish in a single day a pseudoephedrine product or products containing more than a base amount of three and six-tenths (3.6) grams of pseudoephedrine.

(2) It shall be unlawful for any person to knowingly purchase from a retailer more than the daily sales limit of a pseudoephedrine product or products containing a base amount of three and six-tenths (3.6) grams per purchaser or more than a base amount of nine (9) grams of pseudoephedrine in a single thirty (30) day period, regardless of the number of transactions.

(3) The retailer shall not sell the pseudoephedrine product unless the purchaser presents a photographic identification card issued by a state or by the federal government.

(4)(a) A retailer shall, before completing a sale under the provisions of this section, submit the required information to the electronic sales tracking system established under section 37-3303A, Idaho Code, as long as such a system is available without charge to the retailer for accessing the system. The retailer may not complete the sale if the system generates a stop sale alert, except as permitted in section 37-3303A, Idaho Code.

(b) If a retailer selling a nonprescription pseudoephedrine product experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, he or she shall make available for inspection by any law enforcement officer or board inspector during normal business hours the logbook required by the federal combat methamphetamine epidemic act of 2005 until such time as he or she is able to comply with the electronic sales tracking requirement.

(c) A retailer selling a nonprescription pseudoephedrine product may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons for the exemption. The board may grant an exemption for good cause shown, but in no event shall a granted exemption exceed one hundred eighty (180) days. The board may grant multiple exemptions for any retailer if the good cause shown indicates significant hardship for compliance with this section. A retailer that receives an exemption shall make

available for inspection by any law enforcement officer or board inspector during normal business hours the logbook required by the federal combat methamphetamine epidemic act of 2005. For purposes of this subsection, “good cause” includes, but is not limited to, situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive to the retailer.

(d) A retailer may withdraw from participating in the electronic sales tracking system if the system is no longer being furnished without charge for accessing the system. A retailer who withdraws from the electronic sales tracking system is subject to the same requirements as a retailer who has been granted an exemption under subsection (c) of this section.

(e) For the purposes of subsection (4) of this section and section 37-3303A, Idaho Code:

(i) “Charge for accessing the system” means charges relating to:

1. Access to the web-based electronic sales tracking software;
2. Training; and
3. Technical support to integrate to point of sale vendors, if necessary.

(ii) “Charge for accessing the system” does not include:

1. Charges relating to required internet access;
2. Optional hardware that a pharmacy may choose to purchase for work flow purposes; or
3. Other equipment.

History.

I.C., § 37-3303, as added by 2006, ch. 95,
§ 1, p. 269; am. 2012, ch. 303, § 1, p. 841.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 303, rewrote subsections (1) through (3) and added subsection (4).

37-3303A. Electronic tracking system. — (1) The board of pharmacy shall implement a real-time electronic sales tracking system to monitor the nonprescription sale of pseudoephedrine products in this state provided that such system is available to the state without charge for accessing the system to the state or retailers. If a real-time electronic sales tracking system is not available to the state without charge for accessing the system to the state or retailers, the board of pharmacy shall not be required to create such a system.

(2) The records submitted to the tracking system shall include the following:

- (a) The purchaser’s name and address;
- (b) The purchaser’s signature, either on a written form or stored electronically in the tracking system, attesting to the validity of all information provided;
- (c) The type of photographic identification presented pursuant to section 37-3303, Idaho Code;

- (d) The number and issuing government entity of the photographic identification presented;
 - (e) The date and time of sale; and
 - (f) The name and quantity of the product sold.
- (3) The records submitted to the tracking system are for the confidential use of the retailer who submitted such records, except that:
- (a) The records must be produced in court when lawfully required;
 - (b) The records must be open for inspection by the board of pharmacy; and
 - (c) The records must be available to any general or limited authority Idaho peace officer to enforce the provisions of this chapter or to federal law enforcement officers.
- (4) The electronic sales tracking system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits in section 37-3303, Idaho Code. The system shall contain an override function for use by a dispenser of pseudoephedrine products. Each instance in which the override function is utilized shall be logged by the system.
- (5) The board of pharmacy shall have the authority to adopt rules necessary to implement and enforce the provisions of this section and section 37-3303, Idaho Code.
- (6) A retailer participating in the electronic sales tracking system:
- (a) Is not liable for civil damages resulting from any act or omission in carrying out the requirements of this section or section 37-3303, Idaho Code, other than an act or omission constituting gross negligence or willful or wanton misconduct; and
 - (b) Is not liable for civil damages resulting from a data breach that was proximately caused by a failure on the part of the electronic sales tracking system to take reasonable care through the use of industry standard levels of encryption to guard against unauthorized access to account information that is in the possession or control of the system.

History.

I.C., § 37-3303A, as added by 2012, ch. 303,
§ 2, p. 841.

